

February 28, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WT Docket No. 16-421
Streamlining Deployment of Small Cell Infrastructure by
Improving Wireless Facilities Siting Policies

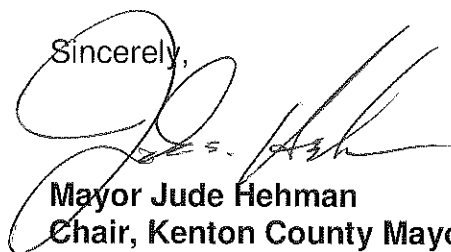
Dear Ms. Dortch:

This letter and supplemental information is being submitted in response to the FCC's public notice for comments on ways in which the Commission could promote wireless infrastructure deployment by issuing a declaratory ruling, including but not limited to those suggested in a Petition for Declaratory Ruling filed by Mobilitie, LLC, on November 15, 2016.

The responses included herein were compiled by the Kenton County Mayors Group representing the jurisdictions of Covington, Crescent Springs, Crestview Hills, Edgewood, Elsmere, Erlanger, Fort Mitchell, Independence, Unincorporated Kenton County, Lakeside Park, Ludlow, Park Hills, Ryland Heights, Taylor Mill and Villa Hills in Kentucky; and Planning and Development Services of Kenton County.

Should there be any questions regarding this submission please contact Andy Videkovich with PDS at 859.331.8980 or avidekovich@pdskc.org

Sincerely,

A handwritten signature in black ink, appearing to read "Jude Hehman", is written over the word "Sincerely,".

Mayor Jude Hehman
Chair, Kenton County Mayors Group

CC: Mayor of Covington, Mayor of Crescent Springs, Mayor of Crestview Hills, Mayor of Edgewood, Mayor of Elsmere, Mayor of Erlanger, Mayor of Independence, Mayor of Lakeside Park, Mayor of Ludlow, Mayor of Park Hills, Mayor of Ryland Heights, Mayor of Taylor Mill, Mayor of Villa Hills and Judge Executive of Kenton County.

Responses:

1. ***At present, how much time typically elapses between the filing of complete facility siting applications and the approval or denial of such applications by local land-use authorities?***

In Kenton County, it takes on average about 27 days to review and approve small cell tower applications. The Kenton County Cell Tower Regulations (adopted May 5, 2016) require final action within 60 days once an application and filing fee is submitted and deemed complete. If there is no action within 60 days, the application shall be deemed to be approved as submitted.

2. ***Explain the extent to which siting review procedures for small wireless facilities are the same as those in place for macrocells.***

Applicants for small wireless facilities have two options for review and approval of their proposed facilities:

- a. They can choose to have the small wireless facility reviewed exactly the same way as a macrocell. This includes:
 - i. A pre-application conference.
 - ii. A Uniform Application and \$2,500 fee as specified in Kentucky Revised Statute (KRS) Chapter 100.
 - iii. Public notice and hearing by the Kenton County Planning Commission (KCPC)
 - iv. The KCPC must take final action within 60 days or the facility is deemed to be approved as submitted.
- b. Alternatively, they may choose an administrative review procedure, which includes:
 - i. A pre-application conference.
 - ii. An application fee based upon the number of small wireless facilities included in the application. This can range from \$500 to \$2,500.
 - iii. Submittal materials that generally include describing the physical tower, character of the adjacent area, and the provider's coverage objectives.
 - iv. Administrative review and approval Planning and Development Services (PDS) staff.
 - v. If there is no action within 60 days, the application shall be deemed to be approved as submitted.

3. ***How long does it typically take local governments to process macrocell siting applications and how does this compare to the review of small wireless facilities or DAS applications?***

When macrocell sites are reviewed and approved by the KCPC, it takes on

average 60 days to process. As mentioned above, it takes on average about 27 days to review and approve small cell tower applications.

4. ***Are there greater coverage gaps in specific states or locations where applications are processed more slowly or where more stringent showings are required? If so, what extent are these gaps attributable to such factors regarding the processing and consideration of siting applications?***

Not in Kenton County.

5. ***Comment on how local land-use authorities approve or deny siting applications.***

Macrocell sites use the following evaluation criteria:

- a. Agreement with the various elements of the adopted Comprehensive Plan, and where applicable, any other adopted plan.
- b. The extent to which the proposal is consistent with the purposes of these regulations.
- c. The adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.).
- d. The extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.
- e. The extent to which the proposed Cellular Antenna Tower is camouflaged (i.e., use of Stealth Technology).
- f. The extent to which the proposed facility is integrated with existing structures (i.e., buildings, signs).

Small wireless facilities use the following evaluation criteria:

- a. The extent to which the proposal is consistent with the purposes of these regulations.
- b. The extent to which the proposal minimizes the impact on adjacent land uses, especially in terms of visual impact.
- c. The extent to which the proposed facility is camouflaged (i.e., use of Stealth technology).
- d. The extent to which the proposed facility conforms to the character of the surrounding area (i.e., buildings, street lighting, signs).

6. ***How often are applications denied on the basis of (i) their inadequacy or incompleteness; (ii) engineering defects or other technical problems; (iii) environmental impacts; (iv) aesthetic concerns; (v) perceptions of excessive or overly dense deployment of wireless network facilities in particular areas; or (vi) other reasons?***

There has never been a macrocell application or small wireless facility denied for any reason.

7. ***Are some parties' applications granted more frequently or reviewed more expeditiously than others, and if so, why?***

No, there are not.

8. ***Comment on the extent to which litigation ensues as a result of delay or denial of siting applications.***

There has never been any litigation as a result of a delay or denial of a siting application.

9. ***Do litigations invoke Sections 253 or 332 of the Communications Act, Section 6409(a) of the Spectrum Act, or other sources of law in support of their positions?***

N/A

10. ***How long does it take for such lawsuits to be resolved?***

N/A

11. ***How often are cases settled and how often do they proceed to final judgement?***

N/A

12. ***Submit an example of legislation, ordinances, and regulations proposed or adopted by state and local governments (see Section I.C above for example) and explain which of these have been most successful in reducing or restraining administrative burdens, costs and delay, whether such approaches could be employed more generally, and whether they should serve as models for other states or localities to follow.***

The relevant sections of KRS 100 as well as the KCPC's adopted cell tower regulations will accompany this document.

When KRS 100 was adopted, it only dealt with macrocell sites. KRS 100 is effective in providing guidance to local jurisdictions for the regulation of macrocell sites. The requirements of KRS 100, however, are not successful for small wireless facilities for several reasons:

- a. The requirements of KRS 100 do not make a distinction between macrocell sites and small wireless facilities.

- b. The current \$2,500 fee per site allowed by KRS 100 for a macro tower is not appropriate for small cell towers. In one case, a batch system that was proposed would have required \$15,000 in application fees under KRS 100.
- c. The Uniform Application requires information and engineering studies that are not needed to construct the small wireless facility nor useful in the review of applications. The notification requirements of the Uniform Application require every property owner within 500 feet to be notified. This range is far beyond the immediate impact of the small wireless facility. In urban areas where batch systems are proposed this could also result in hundreds or even thousands of notification letters to property owners that will not be affected.
- d. Small wireless facilities are occurring in such numbers that holding a public meeting for each small wireless facility could result in delays in the approval process, not only for small wireless facilities but also for the other applications that the KCPC has to act on. The KCPC only meets once a month, and it is not reasonable for them to be conducting public hearings until the early morning hours. If an agenda is lengthy, they can continue the hearing to a pre-set day and time, but this will result in everyone (including the public) having to attend two meetings, and will increase the administrative costs associated with having legal counsel and the secretary at two meetings.

The KCPC's adopted cell tower regulations address these concerns by:

- a. Making a distinction and specifically defining what a small wireless facility is and is not. From the KCPC's regulations, a SMALL CELL TOWER is:
 - i. Any structure under fifty (50) feet in height with an antenna or transmitter that is constructed for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. A pole originally installed for the primary purpose of supporting wireless telecommunications equipment, regardless of the timeframe between pole installation and connection/implementation of Transmission Equipment, is considered a Small Cell Tower, and is not a Utility Pole. The term Small Cell Tower includes mini cell towers, distributed antenna system towers, micro cell towers, mini cell, Wi-Fi antennas, or similar systems.
- b. Setting an application fee of \$500 for a single small wireless facility. For batch applications, the fees decrease as the number of towers increase. The maximum fee charged for a batch application is \$2,500 for 10 small wireless facilities. This fee schedule was calculated based upon the

administrative costs the KCPC incurs for reviewing and processing applications.

- c. Giving the applicant a choice of submitting a Uniform Application or using a more streamlined application and administrative process.
- d. If an applicant chooses to use the more streamlined process, the application review is strictly administrative with review and approval by the KCPC's staff. These application reviews are closely coordinated with the local jurisdiction beginning with a pre-application meeting with all the parties, and continuing through the review process.

Section 163 of the Constitution of Kentucky requires all that utilize public rights-of-way to secure a franchise agreement. Individual jurisdictions might impose additional fees to review the proposed small cell towers.

13. *To what extent do they unduly restrict (i) locations where facilities may be deployed; (ii) the technical configurations of network facilities; or (iii) access to rights-of-way owned or controlled by state and local governments?*

- a. The KCPC's adopted cell tower regulations have not unduly restricted where small wireless facilities may be deployed.
- b. The KCPC's adopted cell tower regulations have not unduly restricted the technical configurations of small wireless network facilities.
- c. The KCPC's adopted cell tower regulations do not grant or deny access to the rights-of-way owned or controlled by state and local governments. Access to rights-of-way is a decision made by the owner of the right-of-way, not determined by the regulations.

14. *Do they promote or thwart deployment of small cell or DAS facilities or other types of network infrastructure?*

The KCPC's adopted cell tower regulations promote the deployment of small wireless facilities (provided they meet the definition of a small wireless facility) by streamlining the approval process and removing regulatory barriers, while still maintaining local control over rights-of-way and aesthetics of the small wireless facilities.

15. *To the extent they tend to thwart such deployment, is there any legitimate justification for maintaining these requirements in their current form?*

In one instance, a provider (Mobilitie) wanted to erect towers in the right-of-way that did not meet the definition of a small wireless facility. They exceeded the 50-foot maximum height requirement. In this case they were told that they would have to proceed through the Uniform Application process. This was discussed in a pre-application meeting and they have not submitted an application for these towers.

The justifications for the 50-foot requirement are:

- a. Facilities that locate within the rights-of-way (telephone/electric poles, signs, traffic lights) are less than 50 feet. Anything over 50 feet not be consistent with other facilities within the rights-of-way.
- b. Based upon research while drafting the regulations, 50 feet is an appropriate height for distinguishing between a small cell facility and a macrocell facility.

16. *Comment on the types of fees that local governments currently impose on providers for building facilities in rights of ways, including both up-front fees for processing applications and recurring usage charges.*

Under the KCPC's adopted cell tower regulations, an application fee is required based on the number of small cell facilities being proposed.

- a. For one (1) to three (3) the fee is \$500 per tower
- b. For four (4) to six (6) the fee is \$400 per tower
- c. For seven (7) to ten (10) towers the fee is \$2,500 total.

Cities in Kenton County use different mechanisms in dealing with installation of facilities in the public right-of-way. Some cities have an encroachment permit process to involve coordinating with the applicant and reviewing the parameters of the installation. Most of our communities do not charge a fee for this process.

17. *Comment on whether the Commission should take additional steps, by interpreting relevant statutory provisions, to help promote deployment of needed wireless infrastructure while protecting localities' legitimate interests.*

Yes, providing interpretations will provide guidance with the deployment of this infrastructure.

18. *Comment on whether the Commission should issue a declaratory ruling to further clarify any issues addressed in its 2009 and 2014 rulings or to fine-tune or modify any of its past statutory interpretations in light of current circumstances.*

The declaratory rulings from 2009 and 2014 adequately address and are very clear regarding what is considered a reasonable time frame and what criteria local governments may apply when deciding whether to approve small cell facilities.

Regarding any ruling or interpretation made by the FCC, it is important to make state and local officials aware of these actions. The KCPC was only made aware of these 2009 and 2014 actions when it decided to update their regulations in

2016. If state and local officials are not clearly made aware of these decisions, then their state and local codes may be in direct conflict with these decisions or interpreted in a way that is not consistent with these decisions. This could result in unnecessary litigation and time delays.

19. ***Aside from the basic interpretation, however, the Commission has not addressed in detail the meaning of the statutory phrase “prohibit or have the effect of prohibiting” or the demonstration needed to establish that a state or local government’s actions have prohibited or had the effect of prohibiting the provision of service for purposes of either Section 253 or 332. Should the Commission, as the expert agency, attempt to reconcile or otherwise resolve these or other differences of interpretation among the courts, and if so, how?***

Any guidance the Commission can provide on this matter is welcome.

20. ***For instance, does an action that prevents a technology upgrade “have the effect of prohibiting” the provision of service?***

This question is vague and we need more details to answer this.

21. ***Should the Commission address other disputed issues regarding the meaning of the phrase “prohibits or has the effect of prohibiting”?***

This question is vague and we need more details to answer this.

22. ***In the 2009 Declaratory Ruling, the Commission found that a “reasonable period of time” under Section 332(c)(7)(B)(ii) is presumptively 90 days for state or local governments to process collocation applications and presumptively 150 days to process all other applications. Comment on whether different presumptive timeframes are “reasonable” in the small cell context.***

These timeframes are reasonable for reviewing small cell facilities and our current process accommodates the review and installation of mini cell facilities within this timeframe. KRS 100 as well as the KCPC regulations require all applications to be acted upon within 60 days.

23. ***Comment on whether the timeframes should vary depending on whether a state or local government receives siting requests proposing one small cell deployment at a time or consolidated applications that request authority for a single provider to deploy multiple small cells (i.e., a “batch” of small cell siting proposals)***

Within Kenton County, our experience is that reviewing a single small cell facility application takes less time than reviewing a batch of small cell systems. Based

upon this experience, varying timeframes for single versus batch system applications are appropriate. Our local regulations already set the parameters to address this issue.

- 24. *Comment on whether the presumptive deadlines adopted in the 2009 Declaratory Ruling reflect an approach more appropriate for traditional macrocells than for the types of cells discussed here, which are much smaller and can be place on light pole, utility poles, buildings, and other structures either on private property or in the public right of way.***

Based upon KRS 100 and the KCPC's regulations, the presumptive deadlines adopted in the *2009 Declaratory Ruling* are an appropriate approach for traditional macrocells as well as for small cell facilities.

- 25. *Comment on whether our interpretation of a "reasonable period of time" under Section 332(c)(7)(B)(ii) should be shorter for state and local governmental review of small cell facility applications.***

The interpretation of a "reasonable period of time" of 90 days for state or local governments to process collocation applications and presumptively 150 days to process all other applications is reasonable.

In Kentucky, KRS 100 limits review and approval time to 60 days from when the application was filed. These are reasonable timelines. Shortening of these timelines places an undue burden on our regulatory authorities for faster review that is unwarranted.

- 26. *Comment on how the Commission could define "small cell" for this purpose.***

For this purpose, small cell could be defined as:

"Any structure under fifty (50) feet in height with an antenna or transmitter that is constructed for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. A pole originally installed for the primary purpose of supporting wireless telecommunications equipment, regardless of the timeframe between pole installation and connection/implementation of Transmission Equipment, is considered a Small Cell Tower, and is not a Utility Pole. The term Small Cell Tower includes mini cell towers, distributed antenna system towers, micro cell towers, mini cell, Wi-Fi antennas, or similar systems."

- 27. Comment on whether the presumptively reasonable timeframe should be longer when many facilities requests are submitted at once. Could we interpret the Act so as to encourage the practice of processing a “batch” of siting requests by finding longer timeframes to be reasonable if the local government accommodates batched submissions, while holding to the existing, shorter timeframes if it only accepts individual applications?**

The presumptively reasonable timeframe should be longer for large batch systems, for instance 10 or more. Batch systems should be encouraged as much as possible, through longer timeframes or other mechanisms.

There should be a maximum number small wireless facilities that can be included on a batch application. The KCPC limits the number to 10.

- 28. For example, should the Commission consider presumptions of 120 days for processing batches of collocation applications and 180 days for processing batches of applications for deployments other than collocations? If so, what should be the minimum number of sites to qualify as a “batch” for this purpose? Should there be multiple tiers depending on how many poles or antennas are involved?**

- a. This would depend on the number of towers and the complexity of the locations.
- b. In Kenton County, all applications must be acted on within 60 days.
- c. The minimum number of sites that qualify as a batch in the KCPC's adopted regulations is 2.
- d. Tiers of timeframes based upon the number of antennas is reasonable.

- 29. Information on the process for reviewing and making decisions on siting applications for small wireless facilities (including DAS and small cells), particularly the amount of time it takes for the completion of the process. Explain the extent to which siting review procedures for small cells are the same as have been in place for macrocells. How long does it typically take local governments to process macrocell siting applications and how does this compare to the review of small cells?**

Siting review procedures for small wireless facilities is different from the siting review procedures of macrocells. The biggest differences in the procedures is the application fees, the information required on an application, and an administrative review.

- a. Fees:
 - i. The KCPC collects \$2,500 for the review of macrocells, which is the maximum allowed by KRS 100.
 - ii. The KCPC set up a fee structure that is representative of what it takes to recover the costs of reviewing small wireless facilities. The

fee structure also encourages batch applications by reducing the cost per facility as the number of facilities increases.

- b. Application requirements
 - i. KRS 100.9865 requires 20 items to be submitted with a Uniform Application for a macrocell, including simple items like the name and address of the applicant to very detailed engineering plans and requirements.
 - ii. The KCPC's adopted regulations require 10 items to be included with an application for a small wireless facility including descriptions of the coverage areas and development plans.
- c. Review
 - i. KRS 100 requires that every Uniform Application is required to have a public hearing at the KCPC. Prior to this hearing, every property owner within 500 feet is notified of the hearing. The timeframe from an application being received to it being heard and decided by the KCPC is an average of 60 days, which is the maximum allowable timeframe allowed by KRS 100.
 - ii. The KCPC's adopted regulations requires an administrative review and approval by staff. This review period takes on average about 27 days to complete. There is also an appeal period is an applicant disagrees with staff's decision.
 - iii. The timeframes noted above is only for KCPC or staff action and do not take into account the time needed to receive additional building and/or zoning permits.

30. *Information on the extent to which “batching” is currently used by the industry and local governments for the review of small cell deployments and to explain how well that process has been working to expedite the process and provide local governments with the information they need to make decisions on siting applications.*

Batching has been used successfully in Kenton County to review and approve up to 6 new small wireless facilities on a single application. The timeframe for that review and approval was 37 days.

The timeframe for the review of these small wireless facilities may have been about the same if individual applications were submitted. The administrative costs would have been higher with multiple applications versus a single application.

31. *Comment on whether the public interest would be served by issuing clarifications of any of the terminology in Section 253(c), as Mobilite requests in its Petition.*

As long as the clarifications do not have the effect of eroding local authority over the public rights-of-way and adversely affect local government revenues, then clarifications are welcome on this matter.

- 32. *According to Mobilitie, the phenomenon of excessive and unfair fees for use of rights of way “is not confined to a few outlier locations – it exists nationwide. Across the country, Mobilitie is being confronted with multiple fees, often being asked to pay not only up-front fees but also annual recurring fees which escalate by mandatory amounts year after year.” Comment on whether these assertions are well-founded.***

These assertions are not well-founded in Kenton County. The process for mini cell-towers is streamlined with one set of regulations that have to be dealt with for installation in any one of the 20 jurisdictions within Kenton County. Each jurisdiction does deal with the placement of the tower in the public right-of-way differently but most of our jurisdictions do not even charge a fee. As owner of the public rights-of-way, jurisdictions have both the legal responsibility and duty to taxpayers to assure coordination in and payment for use of public right of way by companies utilizing the public right of way for profit.

- 33. *How do local governments determine the up-front fees for applications and permits or the recurring fees for usage of rights of way?***

The planning commission has a set fee for the application and permit. But as the owners of the public rights-of-way, each jurisdiction is required to enter into a franchise agreement as required by Section 163 of the Kentucky Constitution. Jurisdictions may, with limitations, charge an additional processing fee if they deem necessary.

- 34. *Do they set up-front fees based on the costs they incur in reviewing such applications or related administrative tasks such as monitoring the provider’s construction of facilities, ensuring compliance with local building codes and excavation regulations, and verifying liability insurance?***

Yes.

- 35. *Are recurring charges set based on localities’ ongoing costs of managing use of rights of way?***

Yes.

- 36. *To what extent are localities imposing charges based on other considerations, such as percentages of gross revenues or other indicia of the value of the use of the right-of-way?***

Each jurisdiction independently evaluates and places a value on the cost of the right-of-way occupations for their taxpayers..

- 37. *Comment on whether and how the Commission should interpret Section 253(c) for the purpose of ensuring that fees imposed on providers for using rights of way do not exceed fair and reasonable compensation. Should the Commission, as the expert agency, issue a declaratory ruling addressing the issues referred to above or to address other issues that the courts have not resolved to date?***

None at this time. Our cities and county will be fair should a fee be imposed and we do not need a ruling to address the issue. Resources at the local level are not unlimited and we are entrusted with the fair and reasonable use of the public rights-of-way.

- 38. *How should the statutory term “fair and reasonable compensation” be defined?***

If the term is further defined there should be enough language to support local governments desire to address mini cell towers based on the availability of their resources. Our jurisdictions are tightly staffed with multiple regulations that govern us. It would be almost impossible to define this term for it to be uniformly applied to all. Also, just within Kenton County each jurisdiction has unique circumstances whether it be location, topography and other elements such as value to the taxpayer for use of the public rights-of-way that may impact this as well.

- 39. *What are the appropriate criteria for state and local governments to apply in establishing fair and reasonable compensation?***

Availability of resources to review is a major factor in establishing fair and reasonable compensation. Our jurisdictions are tightly staffed with multiple regulations that govern us. It would be almost impossible to define this term for it to be uniformly applied to all.

- 40. *Must up-front fees or recurring compensation for use of local governments’ rights of way be based on cost? If so, what measures of costs would be appropriate?***

It could potentially be based on cost but our local jurisdictions should have the ability to decide how they want to address this. Just within Kenton County’s 19 jurisdiction there are a variety of ways in which cities have chosen or deferred from instituting fees. This is based on the amount of resources that may be available to the local jurisdiction which is also vastly different. Each jurisdiction

independently evaluates and places a value on the cost of the right-of-way occupations for their taxpayers.

- 41. *Do the rules governing the computation of cost-based rates for pole attachments and access to private utilities' rights of way provide useful analogs for the "reasonable compensation" that state or local governments may assess? Why or why not?***

While we currently do not have a cost-based rate beyond the application process and related fee, local governments should retain the ability to establish reasonable compensation should they choose to do so. Even within Kenton County the resources that are available to each jurisdiction is vastly different and hence it is not reasonable to establish a uniform process for this.

- 42. *What types of expenses may local authorities recover through up-front and recurring charges, respectively?***

While we currently do not charge any fee we should have the ability to do so in the future to recover costs for ongoing upkeep of the public rights-of-way, administrative review costs, installation monitoring, coordination with elected officials and residents and so on. We are entrusted with the public's trust and should retain the ability to reimburse tax payers for the use of their public rights-of-way.

- 43. *Comment on Mobilitie's proposal that that recurring charges be limited to "incremental personnel and other costs for monitoring the facilities (for example, to ensure they are maintained in compliance with signage and other requirements)."***

No limitations should be placed on the costs since every community is different and all circumstances and resources that jurisdictions have cannot be realistically evaluated and quantified. The processes that have been adopted locally within Kenton County are thorough and adequate to address this

- 44. *Comment on Mobilitie's request that the Commission interpret Section 253(c)'s "competitively neutral and nondiscriminatory" provision as requiring that fees imposed on a provider for access to rights of way may not exceed the charges that were imposed on other providers for similar access to the rights of way.***

Even within Kenton County's 20 jurisdictions, there are a wide variety of factors that could affect the installation of a mini cell tower. Topography, location, historic nature of the community and so on play a very important role in the review process. The application process set out by our planning commission already does not distinguish between providers. It has adequately been handled at the local level. As it would not be required that all private property owners be

required to accept the same fees for the installation of the facility on their property, it is unreasonable to expect that the same fees will be imposed on all providers just because it is a public right-of-way.

- 45. *Is this an appropriate or the best definition for the statutory phrase “competitively neutral and non-discriminatory”? If not, we seek comment on alternative definitions.***

We believe that our process is already competitively neutral and non-discriminatory based on the regulations that have been adopted.

- 46. *What factors could properly be taken into account if the Commission were to interpret the statutory nondiscrimination requirement, as Mobilitie proposes, based on “a comparison of the relevant charges and the reasons for them,” so that fees paid by different providers could vary only if “they cover dissimilar deployments, or where one deployment imposes materially greater burdens on a right of way than another.”***

We believe that our process is already competitively neutral and non-discriminatory based on the regulations that have been adopted. Placing any additional restrictions on our process will simply remove our ability to address these mini cell towers in the context of our unique individual communities.

- 47. *Comment on the extent which discriminatory charges imposed by local governments on providers are a widespread occurrence that needs to be addressed.***

There are no discriminatory charges imposed by local governments on providers in Kenton County. We have a fair process that has been established through the planning commission for all 20 jurisdictions. The applications are reviewed in a thorough and equitable manner. Based on the current installations, all and any issues that have risen, were dealt with expeditiously.

- 48. *Comment on Mobilitie’s request that the Commission address the provision in Section 253(c) that compensation for the use of rights of way be “publicly disclosed by such government.” Should the Commission adopt Mobilitie’s proposal to “declare that localities must at least disclose to a carrier upon request the charges they have imposed on all carriers for access to rights of way,” including “not only the amount of the charges” but also “how they [were] calculated”? Comment on the extent to which this information is unavailable from local governments and whether lack of information is a widespread problem.***

There are no issues with public disclosure of the compensation sought for the use of the rights-of-way. All local jurisdictions are required to provide this information if asked as part of the open records act. Some of our cities have all of

their financial information on their website and information such as this can easily be sought. We are not aware of any provider who has been denied this information if requested.

We strongly request that no time limitation be placed on the request in order to allow local governments to adequately expend their resources to the request.